

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1905.

No. 1583.

377

No. 13, SPECIAL CALENDAR.

THE UNITED STATES OF AMERICA, APPELLANT,

VS.

THE BALTIMORE AND OHIO RAILROAD COMPANY

APPEAL FROM THE DECISION OF THE DISTRICT COURT OF COLUMBIA.

FILED JULY 18, 1905.

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COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1905.

No. 1583.

No. 13, SPECIAL CALENDAR.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

THE UNITED STATES OF AMERICA, Appellant,
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY. } No. 1583.

a Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA, Plaintiff, }
vs. } No. 47602. At Law.
BALTIMORE AND OHIO RAILROAD COMPANY, }
Defendant.

UNITED STATES OF AMERICA, { ss :
District of Columbia,

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Declaration to Recover Penalty, &c.*

Filed Mar. 22, 1905.

In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA, Plaintiff, }
vs. } No. 47602. At Law.
BALTIMORE AND OHIO RAILROAD COMPANY, }
Defendant.

I. The plaintiff, The United States of America sues the defendant, The Baltimore and Ohio Railroad Company, a body corporate under the laws of the State of Maryland, and having an office and doing business in the District of Columbia, for money payable by the defendant to the plaintiff, for that, heretofore, to wit, on the 21st day of February, A. D., 1905, the defendant was, and is, a railroad company, and a common carrier engaged in interstate commerce between the District of Columbia and the several States of the United States, and particularly between the District of Columbia and the State of Maryland ;

That on the day and year aforesaid, and at the District aforesaid, the defendant did have in its possession and under its control a certain railroad freight car known and described as "B. & O. box car No. 73064," and that the said car was not on the day aforesaid provided with secure grab irons or handholds in the ends thereof for greater security to men in coupling and uncoupling cars;

2 That on the day and year aforesaid, and while the said car was not provided with grab irons or handholds as aforesaid, the defendant, well knowing the premises, did unlawfully use the said car in interstate commerce, that is to say, the defendant, while the said car was loaded with paper consigned from Washington, in the District of Columbia, to Pencoyd, in the State of Pennsylvania, did haul the said car over its line of railroad in the District of Columbia in a northerly direction into and over its line of railroad in the State of Maryland; contrary to the form of the statutes in such case made and provided, to wit, the act of Congress approved March 2, 1893, entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes," as said act of Congress was amended by the act of Congress approved April 1, 1896, entitled, "An act to amend an act entitled 'An act to promote the safety of employees and travelers' and so forth, approved March second, eighteen hundred and ninety-three;" as said act of Congress was amended by the act of Congress approved March 2, 1903, entitled "An act to amend an act entitled 'An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes,' approved March second, 1893, and amended April 1, 1896;" whereby and by force of the said statutes an action has accrued to the plaintiff to demand and have of the defendant the sum of one hundred dollars.

3 And the plaintiff claims of and from the defendant by reason of the premises, the sum of one hundred dollars, with interest from February 21st, 1905, and costs of this suit.

II. The plaintiff The United States of America sues the defendant The Baltimore and Ohio Railroad Company, a body corporate under the laws of the State of Maryland, for other money payable by the defendant to the plaintiff, for that heretofore, to wit, on the 21st day of February, A. D., 1905, the defendant was, and is, a railroad company, owning and operating a line of railroad in the District of Columbia and engaged as a common carrier in and upon said line of railroad in the District of Columbia;

That on the day and year aforesaid and at the District aforesaid the defendant did have in its possession and under its control a certain railroad freight car known and described as "B. & O. box car No. 73064," and that the said car was not on the day aforesaid provided with

secure grab irons or handholds in the ends thereof for greater security to men in coupling and uncoupling cars; that at the time and place aforesaid the said car contained a consignment of paper to be sent from the District of Columbia to Peucoyd, in the State of Pennsylvania;

And that at the time and place aforesaid, and while the said car was not provided with grab irons or handholds as aforesaid, the defendant did unlawfully use the said car on its line of railroad in the District of Columbia, that is to say, did haul the said car, while loaded as aforesaid, over its line of railroad in the District of Columbia in a northerly direction into the State of Mary-

land; contrary to the form of the statutes in such case
4 made and provided, to wit, the act of Congress approved March 2, 1893, entitled, "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes" as said act of Congress was amended by the act of Congress approved April 1, 1896, entitled, "An act to amend an act entitled 'An act to promote the safety of employees and travelers' and so forth, approved March second, eighteen hundred and ninety-three;" as said act of Congress was amended by the act of Congress approved March 2, 1903, entitled "An act to amend an act entitled 'An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes,' approved March 2, 1893, and amended April 1, 1896;" whereby and by force of the said statutes an action has accrued to the plaintiff to demand and receive of the defendant the sum of one hundred dollars.

And the plaintiff claims of and from the defendant by reason of the premises the sum of one hundred dollars with interest from February 21, 1905, and costs of this suit.

MORGAN H. BEACH,
*Attorney of the United States in and
for the District of Columbia.*

5 The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

MORGAN H. BEACH,
*Attorney of the United States in and
for the District of Columbia.*

THE UNITED STATES OF AMERICA VS.

Demurrer of Defendant.

Filed Apr. 19, 1905.

In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA	}	At Law. No. 47602.
vs.		
THE BALTIMORE AND OHIO RAILROAD COMPANY.		

Now comes the defendant and demurs to the plaintiff's declaration filed in the above entitled cause, and says that the same is bad in substance.

HAMILTON & COLBERT,
Attorneys for Defendant.

NOTE.—One of the matters of law intended to be argued in support of the foregoing demurrer is that the supreme court of the District of Columbia is without jurisdiction to entertain and determine the cause of action set up in said declaration.

6 Supreme Court of the District of Columbia.

FRIDAY, June 9th, 1905.

Session resumed pursuant to adjournment, Hon. Harry M. Claibagh, chief justice, presiding.

* * * * *

THE UNITED STATES OF AMERICA, Plaintiff,	}	No. 47602. At Law.
vs.		
THE BALTIMORE AND OHIO RAILROAD CO., Defendant.		

Upon consideration of defendant's demurrer filed herein by its attorneys to the declaration, it is ordered that said demurrer be and is hereby sustained; with leave to plaintiff to amend as it may be advised within twenty days hereof.

Order Allowing Special Appeal.

Filed June 14, 1905.

Court of Appeals of the District of Columbia, April Term, 1905.

No. 224, Original Docket.

THE UNITED STATES OF AMERICA, Petitioner,	}	Law. No. 47602.
vs.		
THE BALTIMORE AND OHIO RAILROAD COMPANY.		

On consideration of the petition of the United States of America for the allowance of a special appeal from an order of the supreme

7 court of the District of Columbia, entered herein on the 9th day of June A. D., 1905, it is by the court now here ordered that said appeal be, and the same is hereby, allowed.

By the court:

SETH SHEPARD,
Chief Justice.

June 13, 1905.

A true copy.

Test:

[SEAL.]

HENRY W. HODGES,
*Clerk of the Court of Appeals
of the District of Columbia.*

Order to Clerk to Issue Citation and to Prepare Record.

Filed June 14, 1905.

In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA	}	No. 47602. At Law.
vs.		
BALTIMORE AND OHIO RAILROAD COMPANY.		

To the clerk of the court:

The Court of Appeals of the District of Columbia having allowed a special appeal from the order of this court sustaining the demurrer of the defendant, you will please issue a citation to the defendant The Baltimore and Ohio Railroad Company notifying it of said appeal, and will also please prepare the transcript of the record for the Court of Appeals.

MORGAN H. BEACH,
*Attorney of the United States in and
for the District of Columbia.*

8 In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA	}	At Law. No. 47602.
vs.		
THE BALTIMORE AND OHIO RAILROAD COMPANY.		

The President of the United States to the Baltimore and Ohio Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the rules of said court, pursuant

to an appeal allowed in the Court of Appeals of the District of Columbia, on the 13th day of June, 1905, wherein The United States of America, is appellant, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia. Witness the Honorable Harry M. Clabaugh, chief justice of the supreme court of the District of Columbia, this 14th day of June in the year of our Lord one thousand nine hundred and five.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this — day of —, 190—.

Attorney for Appellee.

[Endorsed:] No. 47602. Law. The United States of America vs. The Baltimore and Ohio Railroad Co. Citation. Issued June 14, 1905. Served copy of the within citation on appellee Baltimore and Ohio Railroad Company by service on J. F. Legge its agent June 14, 1905 Aulick Palmer marshal. Morgan H. Beach attorney for appellant.

9 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, }⁸⁸:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 8, inclusive, to be a true and correct transcript of the record, as per rule 5 of the Court of Appeals of the District of Columbia, in cause No. 47,602, at law, wherein The United States of America is plaintiff, and The Baltimore and Ohio Railroad Company is defendant, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia. In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 15th day of July, A. D. 1905.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1583. The United States of America, appellant, vs. The Baltimore and Ohio Railroad Company. Court of Appeals, District of Columbia. Filed Jul-18, 1905. Henry W. Hodges, clerk.

to an appeal allowed in the Court of Appeals of the District of Columbia, on the 13th day of June, 1905, wherein The United States of America, is appellant, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia. Witness the Honorable Harry M. Clabaugh, chief justice of the supreme court of the District of Columbia, this 14th day of June in the year of our Lord one thousand nine hundred and five.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this — day of —, 190—

_____,
Attorney for Appellee.

[Endorsed:] No. 47602. Law. The United States of America vs. The Baltimore and Ohio Railroad Co. Citation. Issued June 14, 1905. Served copy of the within citation on appellee Baltimore and Ohio Railroad Company by service on J. F. Legge its agent June 14, 1905 Aulick Palmer marshal. Morgan H. Beach attorney for appellant.

9 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 8, inclusive, to be a true and correct transcript of the record, as per rule 5 of the Court of Appeals of the District of Columbia, in cause No. 47,602, at law, wherein The United States of America is plaintiff, and The Baltimore and Ohio Railroad Company is defendant, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 15th day of July, A. D. 1905.

Seal Supreme Court of the District of Columbia.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1583. The United States of America, appellant, vs. The Baltimore and Ohio Railroad Company. Court of Appeals, District of Columbia. Filed Jul-18, 1905. Henry W. Hodges, clerk.

NOV 7 - 1905

Henry W. Hodges,
Clerk.

Court of Appeals, District of Columbia.

OCTOBER TERM, 1905.

No. 1583.

No. 13, SPECIAL CALENDAR.

THE UNITED STATES OF AMERICA, APPELLANT.

vs.

THE BALTIMORE AND OHIO RAILROAD
COMPANY.

BRIEF ON BEHALF OF APPELLEE.

GEORGE E. HAMILTON,

M. J. COLBERT,

For Appellee.

Court of Appeals, District of Columbia.

OCTOBER TERM, 1905.

No. 1583.

No. 13, SPECIAL CALENDAR.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

THE BALTIMORE AND OHIO RAILROAD
COMPANY.

BRIEF ON BEHALF OF APPELLEE.

STATEMENT.

This suit was brought by the United States against the Baltimore and Ohio Railroad Company, under act of Congress approved March 2, 1893, as amended by act approved April 1, 1896, to recover the penalty in the sum of one hundred dollars from the defendant because of its failure to provide a certain car, described as B. and O. box car No. 73064, with secure grab-irons or hand-holds in the ends thereof for security in coupling, &c. The car, it is alleged,

was loaded in Washington with paper consigned to Pencoyd, in the State of Pennsylvania, and was hauled over its lines from Washington into the State of Maryland.

The suit was entered on the docket of the supreme court of the District of Columbia, holding a special term as a circuit court.

The defendant demurred to the declaration, raising the question of jurisdiction, which demurrer was sustained. From the judgment sustaining said demurrer the United States took a special appeal to this court.

I.

The sole question to be considered on this appeal is the question of jurisdiction.

The suit is a statutory one and brought under the act of Congress of March 2, 1893; as amended by the act of April 1, 1896, both of them referred to in the record (p. 2). The section in said act providing for the violation of its provisions is section 6, and reads as follows :

“That any such common carrier using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its lines, any car in violation of any of the provisions of this act, shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed.”

The district courts of the United States comprise a distinct system of Federal courts, which does not include the supreme court of the District of Columbia. But it is contended that Congress has conferred upon the supreme court of the District of Columbia the jurisdiction possessed and exercised by the judges of the circuit and district courts of the United States. Passing the question of the power of

Congress to confer this jurisdiction, it would not seem that the mere possession of the right to exercise a jurisdiction would, without some expression in the statute creating a particular remedy, call into existence the exercise of this right.

The full and complete enforcement of the provisions of the act of 1893 do not require that actions thereunder should be brought in the supreme court of the District of Columbia.

According to the declaration, the offending car was proceeding from the District of Columbia to Pencoyd, in the State of Pennsylvania, and every violation detected in the District of Columbia must, of necessity, be a violation which could have been detected as well in Maryland, Virginia, or Pennsylvania.

Bearing this in mind and remembering that the act of Congress requires that suits shall be brought in the district court of the United States having jurisdiction in the locality where such violation shall have been committed, it would seem that reference to the District of Columbia was not an oversight, and this view strengthens when it is remembered that Congress is very particular in referring to the District of Columbia where general laws are intended to be made applicable here.

II.

But if the supreme court of the District of Columbia does possess the jurisdiction of a district court and if it was intended by Congress that suits under the act of 1893 should be instituted in the District of Columbia, does the act give effect to this intention? If the supreme court of the District of Columbia has somehow and somewhere a jurisdiction, is not such jurisdiction lodged by the Code in the supreme court of the District of Columbia, holding a term as a district court of the United States (Code, secs. 62-63-64.) But the supreme court of the District of Columbia, holding a term as a district court of the United States, is not provided with the machinery to try this case. It has no authority

to summon a jury, and this action is plainly an action to be tried before a jury.

Clearly the act as it stands, whatever the intention of Congress may have been, is inapplicable to the District of Columbia.

It is respectfully submitted that the judgment below should be affirmed.

GEORGE E. HAMILTON,
M. J. COLBERT,
Attorneys for Appellee.

